

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION

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MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Philip Raymond (0:17-cv-00299-JNE-FLN)

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Philip Raymond, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In January 2016, Mr. Raymond contacted the undersigned counsel regarding an infection and subsequent treatment that he experienced, allegedly caused by the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On January 30, 2017, counsel filed the current action in this Court pursuant to the Court's Pretrial Order No. 5.

4. Efforts to contact Mr. Raymond to inform him of the Plaintiff Fact Sheet and other necessary steps of the litigation after filing this action were unsuccessful, including phone calls on the following dates:

- January 30, 2017
- April 3, 2017
- June 2, 2017
- June 8, 2017
- June 29, 2017
- July 18, 2017
- August 1, 2017

5. Additionally, letters were sent to Mr. Raymond on the following dates requesting his response to complete the Plaintiff Fact Sheet and warning that failure to comply would result in dismissal of his case:

- February 2, 2017
- April 4, 2017
- August 4, 2017

6. To date, the undersigned counsel has not been able to obtain the necessary information to comply with the requirements set forth by the Court's Pretrial Order No. 14.

7. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel's contact attempts and efforts or completing the Plaintiff Fact Sheet.

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on the Pretrial Order No. 14. Nevertheless, if the Court deems dismissal of the Plaintiff's action to be proper, then it should be dismissed without prejudice granting an opportunity for Plaintiff to reinstate the action.

DATED: August 10, 2017

Respectfully submitted,

**BERNSTEIN LIEBHARD LLP**

By: /s/ Daniel C. Burke

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

This is to certify that on August 10, 2017 a copy of the foregoing document was served on all parties via the Court's electronic filing system.

By: /s/Daniel C. Burke  
Daniel C. Burke